

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

Russell Dawson, #161707,	)	C/A No. 2:07-669-JFA-RSC
	)	
Petitioner,	)	
v.	)	<b>ORDER</b>
	)	
Warden Stan Burt,	)	
	)	
Respondent.	)	
_____	)	

The *pro se* petitioner, Russell Dawson, is an inmate with the South Carolina Department of Corrections at the Lieber Correctional Institution. He has filed this petition under 28 U.S.C. § 2254 seeking a new trial and reversal of his underlying state conviction and 50-year sentence for armed robbery.

The Magistrate Judge assigned to this action<sup>1</sup> has prepared a comprehensive Report and Recommendation wherein he suggests that the petition is successive and that this court cannot consider a successive petition without a Pre-filing Authorization from the Fourth Circuit Court of Appeals. The Report sets forth in detail the relevant facts and standards of law on this

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<sup>1</sup> The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

matter, and the court incorporates such without a recitation.

The petitioner was advised of his right to file objections to the Report and Recommendation, which was entered on the docket on June 12, 2007. While he timely filed objections to the Report, petitioner fails to provide the court with specific objections.<sup>2</sup> Rather, petitioner merely reiterates what he has alleged in his habeas petition and asks the court to review his state court trial transcript to prove the state court did not have subject matter jurisdiction on the criminal sexual conduct offense.

As the Magistrate Judge notes, the petitioner has filed two previous habeas petitions in this court with respect to his state court conviction. The first petition was dismissed as time-barred and such order was not appealed. The second petition was also dismissed as successive because petitioner did not obtain a Pre-filing Authorization.

Under the Anti-Terrorism and Effective Death Penalty Act of 1996 (“AEDPA”) and 28 U.S.C. § 2244(b)(3)(A), a prospective applicant must file in the court of appeals a motion for leave to file a second or successive habeas application in the district court. It appears from the record before this court, that the petitioner has failed to obtain prior authorization from the Fourth Circuit Court of Appeals. Accordingly, this court does not have the appropriate

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<sup>2</sup> Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. However, the district court need not conduct a *de novo* review when a party makes only general and conclusory objections that do not direct the court to a specific error in the Magistrate Judge’s proposed findings and recommendations. *Orpiano v. Johnson*, 687 F.2d 44, 47-48 \*(4th Cir. 1982). In the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4<sup>th</sup> Cir. 2005).

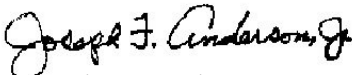
jurisdiction to consider the petition.

After carefully reviewing the applicable law, the record in this case, the Report and Recommendation, and the petitioner's objections thereto, the court finds the Magistrate Judge's recommendation fairly and accurately summarizes the facts and applies the correct principles of law. The court, therefore, adopts the recommendation of the Magistrate Judge in full and incorporates this Report by specific reference.

Accordingly, the petition is dismissed without prejudice and without issuance and service of process.

IT IS SO ORDERED.

June 19, 2007  
Columbia, South Carolina

  
Joseph F. Anderson, Jr.  
United States District Judge